Maryland Law Review

Volume 16 | Issue 2 Article 10

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Accession — Replacement Motor Becomes Part Of Automobile. *Allied Investment Company v. Shaneyfelt, 74 N. W. 2d 723 (Neb. 1956).* An action in replevin was brought by the assignee of a conditional sales contract, duly recorded, to recover a car held by defendant to secure his improvement lien for a new motor put in the car at the request of the conditional vendee but without the knowledge or consent of the vendor, the vendee having defaulted on both car and motor. On plaintiff's appeal from a judgment granting him replevin less the value of the motor, *held,* reversed. The motor, being a vital, integral part of the car, became the property of the conditional vendor upon installation by the doctrine of accession, free of any liens the priority of which he did not approve.

While the Court of Appeals of Maryland has not had occasion to pass upon the law of accession to personalty, there are several cases on improvements to real property. Typical of the Court's view on this subject is *Warwick v. Harvey,* 158 Md. 457, 148 A. 592 (1930). One who makes improvements on land, even though he has constructive notice of his lack of title, is not deprived of the benefit of compensation for said improvements.

Franklin Service Stations v. Sterling Motor Truck Co. of N. E., 50 R. I. 336, 147 A. 754 (1929), and *Tire Shop v. Peat*, 115 Conn. 187, 161 A. 96 (1932), allowed conditional sellers of tires and tubes recovery of new tires put on cars repossessed by the conditional vendors of said cars. *Clark v. Wells*, 45 Vt. 4, held that wheels and axles did not become identified with the car until the conditional vendor of these parts was paid in full. In *Hallman v. Dothan Foundry & Machine Co.*, 17 Ala. App. 152, 82 S. 642 (1919), the mortgagee of a truck body was granted recovery of this body, which had been attached to the chassis of a car. The opposite result was reached in *Bozeman Mortuary Association v. Fairchild*, 253 Ky. 74, 68 S. W. 2d 756 (1934), where a new battery, muffler and tires put on a stolen car by a *bona fide* purchaser became by accession the property of the owner of the stolen car. In *Atlas Ins. Co. v. Gibbs*, 121 Conn. 188, 183 A. 690 (1936), a *bona fide* purchaser installed a new engine in a stolen car. The rightful owner recovered the car but not the engine, which was held to be readily detachable without doing damage to the rest of the car. But compare *National Retailers Mut. Ins. Co. v. Gambino*, 1 N. J. Super. 627, 64 A. 2d 927 (1948), where a thief, after putting a motor to which he had title into a car he had stolen, sold the vehicle to *bona fide* defendant. The Court approved of the *Gibbs* case, *supra*, but distinguished it and allowed plaintiff absolute recovery. *Farm Bureau Mut. Automobile Ins. Co. v. Moseley*, 90 A. 2d 485 (Del. Super. 1952), held that seat covers and a gasoline tank did not become an integral part of the automobile.

Bankruptcy — Preferences — Claim Of Insolvent Estate Is Not Subordinated To Claim Of Holder Of Insolvent Corporation's Note Indorsed By Deceased. *Leo v. L & M Realty Corporation, 228 F. 2d 89 (4th Cir., 1955).* L and M owned all the stock in defendant corporation and were entirely responsible for its conduct of business. The corporation needed money, so L and M each made *bona fide* loans of approximately $17,000, and the corporation executed two notes, one to A bank for $5,000 and one to B bank for $9,000, each note being endorsed by both L and M. L died, leaving an insolvent estate. M took the last $14,000 of corporate assets and paid the two notes. Within four months the estate filed a petition for involuntary bankruptcy of the corporation, alleging preferential payment of the notes. There were no creditors of the corporation other than M, L's estate, and the two banks. On appeal from a dismissal

of the petition, *held,* reversed. The debts to M, to L's estate, and to the banks, being unsecured, all creditors belonged to the same class and payment of the banks' claims was a preference under 11 U. S. C. A., Sec. 96(a)(1) (Supp. 1955). The *bona fide* independent claim of an indorser of a bankrupt's note is not subordinated to the payment of that note in the distribution of the bankrupt's assets. The preference would have prejudiced no other creditors were it not for the insolvency of L's estate; the corporation cannot benefit M, by relieving him of his indorsement liability, at the expense of the creditors of L's estate. "This is just the sort of thing that the Bankruptcy Act was intended to prevent" (92). Soper, J., dissented (92): The equitable principle that a surety may not share equally in a bankruptcy distribution with creditors he has undertaken to secure should not be excluded from this case merely because the competing claims are independent. L, insolvent, had no greater claim against the corporation than L, solvent, and his creditors, regardless of their unsatisfactory position, have no greater claim than L himself. 11 U. S. C. A., Sec. 96(a)(1) (Supp. 1955), is designed to protect the insolvent's creditors, but not the creditors of the creditors.

Constitutional Law — Taking Under Eminent Domain Requires Public Use. *Edens v. City of Columbia, 91 S. E. 2d 280 (S. C. 1956).* Proceeding under the Redevelopment Law, defendant city's Housing Authority proposed to condemn a "blighted area" occupied by slum dwellings, clear it, and sell it to private interests, with appropriate restrictions, for light industrial use. Plaintiff landowners brought an action for declaratory judgment, alleging unconstitutionality of such condemnation proceedings. On appeal from a judgment for defendant, *held,* reversed. Under the South Carolina Constitution, private property cannot be taken by eminent domain except for public use. "Public use" must be narrowly defined to prevent spoliation of private property under the guise of eminent domain. "Public use" and "public benefit" are not synonymous. While acquisition of slum areas for conversion into (1) low cost housing units and (2) light industrial sites may both be for "public benefit", only the former is a "public use". This Court does not adopt the view expressed in *Berman v. Parker,* 348 U. S. 26 (1954) — that, there being a Legislative right, under the police power, to acquire land for the public welfare, the use of eminent domain is but a means to that end.

Sustaining the validity of a proceeding under Baltimore's Redevelopment Law (Md. Constitution, Art. XIB), it was said, in *Herzinger v. Mayor and City Council of Baltimore*, 203 Md. 49, 61, 98 A. 2d 87 (1953), "... acquisition of areas found to be detrimental to the public welfare is a proper public purpose ... our Constitution was amended to approve the incorporation of this feature into the basic law". Placing in private hands after acquisition "does not destroy the public character of the taking insofar as that taking may accomplish a proper public benefit" (60). But the case, and its treatment of the matter, referred to taking for the purpose of erecting better housing facilities. Whether the same criteria would apply to an industrial purpose, as they would under the *Berman* rationale, must depend upon a resolution between the words of Art. XIB(1)(a) (that the taking may include, but is not limited to "the comprehensive renovation or rehabilitation" of the area) and the fact that the Legislature, in a seemingly exclusionary move, expressly provided for takings under the quasi-industrial purposes of providing parking facilities and harbor improvement (Constitution, Arts. XIC, XID).

Federal Tort Claims Act — Government Liability Extends To Injuries Arising From Negligence Of Coast Guard In Operation of Lighthouse. *Indian Towing Company v. United States, 76 S. Ct. 122 (1955).* Petitioner's tug, while towing a barge laden with triple super phosphate, went aground on Chandeleur Island, thereby damaging said phosphate in excess of $60,000. Seeking recovery under the Tort Claims Act, petitioner alleged that the Coast Guard, responsible for operating the lighthouse on said island, negligently allowed the light to go out, and that the loss sustained was the proximate result of the Coast Guard's negligence. The United States District Court granted the Government's motion to dismiss, on the ground that it had not consented to such suit under the Act, which decision was affirmed by the Court of Appeals, 211 F. 2d 886 (5th Cir., 1954). On certiorari, the Supreme Court affirmed, 349 U. S. 902 (1955). On petition for rehearing granted, *held*, (5-4), reversed. 28 U. S. C. A., Sec. 2674 (1950 ed.), states: "The United States shall be liable ... in the same manner ... as a private individual under *like circumstances* (italics supplied) ..." This means that if a private person performed the same function — in this instance, operation of lighthouses — and it would be liable for injuries resulting from negligent performance, then the Govern-

ment is equally liable; "it is hornbook tort law that one who undertakes to warn the public of danger and thereby induces reliance must perform his 'good samaritan' task in a careful manner". Mr. Justice Reed dissented: prior decisions of this Court have determined that the Government is not amenable for negligence arising from any activity "uniquely governmental". "Lighthouse keeping is as uniquely a governmental function as fire fighting."

Previous interpretations of this clause seem to indicate no liability if the function in question cannot be privately controlled. In *Feres v. United States,* 340 U. S. 135, 141 (1950), the Court refused recovery to a serviceman sustaining injuries due to the negligent performance of an operation by an Army doctor. The Court reasoned that the Government is not amenable to prosecution in this instance because there is no analogous liability of a private individual, for no private individual has the power to conscript or mobilize an army. *Dalehite v. United States,* 346 U. S. 15, 43 (1953), denied governmental liability due to the Coast Guard's negligent performance of fire fighting duties, on the basis that public bodies are immune to suit for injuries resulting from fighting fire, which is a purely governmental function.

Intoxicating Liquors—Defendant Acting Only As Agent Of The Prosecutor Is Not Guilty Of Making An Illegal Sale. *Townsel v. State, 286 S. W. 2d 162 (Tex. Crim. App. 1956).* In a dry area the prosecutor requested the defendant to sell him whiskey, whereupon the defendant went and purchased whiskey from a third party and sold it to the prosecutor at no advance in price. The defendant was convicted of an unlawful sale and appealed. *Held,* reversed. Since the defendant had no interest in behalf of the seller, but acted only as agent of the prosecutor, delivering to him at cost, there was no illegal sale.

See entrapment with respect to liquor sales, generally, 18 A. L. R. 162; 66 A. L. R. 488; 86 A. L. R. 267. The reasoning of the case is quite applicable to the numerous illegal sale provisions under Md. Code (1951 and 1955 Supp.), Art. 2B.

Motor Vehicles — Contributory Negligence Of Minor Son Imputed To Father Accompanying Son On Joint Venture. *Nelson v. Fulkerson, 286 S. W. 2d 129 (Tex. 1956).* The plaintiff brought action for personal injuries allegedly sustained when the automobile in which he was a passenger

and which was driven by his minor son collided with defendant. The jury found both drivers negligent. On appeal from judgment for the defendant, *held,* affirmed. The negligence of one engaged in a joint venture is imputed to the other. A joint venture exists not only where there is a common enterprise, but also where there is an equal right, express or implied, of each to control the conveyance in question. In that the minor son lived at home and worked with his father to earn a living for themselves and the others in the family, the father had the right to control his son in the operation of the automobile when the son was driving it, in his father's presence and with his consent, for purposes of farm work to support their family. This relationship having been established by direct testimony, the son's contributory negligence is thereby imputed to the plaintiff as a matter of law, thus barring recovery.

The Maryland case closest to this point is that of *Tobin v. Hoffman,* 202 Md. 382, 389, 96 A. 2d 597 (1953). Therein, the decisive factor in the finding of a joint venture is declared to be the question of whether or not the passenger has a right to impose his views on the driver with respect to the operation of the vehicle; and whether, enjoying such a power, the passenger failed to exercise it, or did, but negligently so.

On the imputation of negligence, see 62 A. L. R. 440; 85 A. L. R. 630. On what constitutes joint venture, see 48 A. L. R. 1055, 1077; 63 A. L. R. 909, 921; 80 A. L. R. 312; 95 A. L. R. 857.

Motor Vehicles — Driver Lawfully Upon The Highway May Assume That Others Will Not Break The Law. *Young v. Truitt, 91 S. E. 2d 115 (Ga. App. 1955).* As an automobile, operated by defendant and in which plaintiff was riding as invitee, approached the crest of a hill on a single lane highway, defendant saw, in her rear-view mirror, a truck, approximately 100 yards distant, moving up from behind at 65 miles per hour. Making no signal and no effort to pull to the right side of the road, defendant slowed from 35 to 30 miles per hour. The truck, trying to pass, struck and overturned defendant's car, injuring plaintiff, who brought this action alleging defendant's negligence for slowing suddenly without signal and for failing to steer to the side of the road to avoid imminent peril. On appeal from a judgment sustaining defendant's demurrer, *held,* affirmed. Under the circumstances, defendant's slowing down was not negligence; even if the truck would have been able to

pass but for the slowing down, the negligence of the truck driver in operating his vehicle at an excessive rate of speed too close to defendant's car was "the sole proximate cause of the collision". Rather than having a duty to pull to the side to avoid the truck, defendant had a right to presume that the truck driver would obey the law and not attempt to pass on a hill and that he would reduce his speed to avoid collision.

While the Court of Appeals has apparently never determined what, if any, standard of care a motorist must exercise to save a guest passenger harmless from the negligence of other motorists, it has had many opportunities to decide whether it is negligence for a motorist to assume others will obey the law. However, the facts and the law of those cases are distinguishable from those of the present case, in that those cases have involved the interpretation of statutes governing the rights of motorists at different types of intersections. For a general survey, see Note, *"Boulevard Stop" Streets in Maryland,* 4 Md. L. Rev. 207 (1940); Due and Bishop, *Automobile Right of Way in Maryland,* 11 Md. L. Rev. 159 (1950); Note, *Driver Having Green Light — Duty of Care,* 13 Md. L. Rev. 350 (1953).

On the broad question of the duty required of a non-negligent motorist confronted with the "moving" negligence of another who is violating the traffic laws, it would at least seem from the Maryland cases that favored motorists at intersections are bound to avoid collision with moving violators only under a very strict doctrine of last clear chance, *i.e.,* where the favored motorist admits having actually seen the violator in time to have avoided him, under circumstances which would lead a reasonable man to say that the favored motorist, with the knowledge he had, proceeded in such a way as to "invite" the collision. Such a rule is a necessary inference from the Court's granting a favored motorist the right to assume the lawful conduct of others by relieving such motorist of the duty to exercise reasonable care in discovering motorists whose illegal conduct threatens imminent collision.

In *Monumental Motor Tours, Inc. v. Becker,* 165 Md. 32, 166 A. 434 (1933), there was no evidence that the favored driver could have avoided the collision. In *Warner v. Markoe,* 171 Md. 351, 358, 189 A. 260 (1937), it was said that "a driver exercising care for his passengers must recognize, as a fact of common knowledge . . . that at crossings to be dealt with by drivers themselves under the law, those from the left will often cross negligently, taking chances

on avoiding collision, or negligently miscalculating the chances". But this warning has never expanded with holdings. In *Askin v. Long,* 176 Md. 545, 551, 6 A. 2d 246 (1939), it was stated that, if the defendant favored driver could have seen the unfavored plaintiff by looking, but either didn't look or didn't see, he was negligent; but the defendant secured a reversal for contributory negligence. In *Greenfeld v. Hook,* 177 Md. 116, 132, 134, 8 A. 2d 888 (1939), the favored driver's primary negligence was permitted to go to the jury on the question whether he did or could have seen the defendant's car in time to avoid the collision, but the judgment entered on a verdict for defendant was reversed on grounds that the plaintiff, as favored driver, had no duty to look for violators. *Shedlock v. Marshall,* 186 Md. 218, 235, 46 A. 2d 349 (1946), and *Belle Isle Cab Co. v. Pruitt,* 187 Md. 174, 180, 49 A. 2d 537 (1946), suggested that, in absence of last clear chance evidence, the favored driver's negligence, if he is acting lawfully, cannot be questioned. In the former, favored driver saw the violator at some distance; in the latter, not at all. In *Sonnenburg v. Monumental Motor Tours, Inc.,* 198 Md. 227, 81 A. 2d 617 (1951), there was ample evidence that the favored driver should have seen the violator, but he was found non-negligent. Only in *Wlodkowski v. Yerkaitis,* 190 Md. 128, 133, 57 A. 2d 792 (1948), where the favored driver actually admitted seeing the violator, doubting that he would stop, and trying to beat him through the intersection was the negligence of a favored driver definitely established for failure to respond reasonably to a collision situation: "Although a driver privileged under the statute is entitled to assume that he will be accorded the right of way . . . he cannot continue to rely upon such assumption *after he discovers* (italics added) that the unprivileged driver does not intend to yield the right of way." Also closely connected to this series of cases is *Pegelow v. Johnson,* 177 Md. 345, 9 A. 2d 645 (1939).

Pleading And Practice — Plaintiff Required To Submit To Physical Examination May Have Either Attorney Or Personal Doctor, Or Both, Present. *Francisco v. Hoffman, 131 N. E. 2d 692 (Court of Common Pleas of Ohio, Franklin County, 1955).* In a personal injury action, defendant moved to require plaintiff to submit to a preliminary medical examination without the presence of plaintiff's attorney. *Held,* although plaintiff must submit to the physical examination, she may have present during the examination either her

attorney or personal doctor. Further, counsel for plaintiff, if either he or the personal physician is not present, may examine the report under the numerous limitations set forth in 17 Am. Jur. 52, Discovery and Inspection, Sec. 71.

Upon proper application by the defendant, the court, at its discretion, may order the plaintiff to submit to a physical examination. *United Rys. & Elec. Co. v. Cloman*, 107 Md. 681, 69 A. 379 (1908); *Scheffler v. Lee*, 126 Md. 373, 94 A. 907 (1915). In *Brown v. Hutzler Bros. Co.*, 152 Md. 39, 136 A. 30 (1927), the plaintiff was allowed to bring her family physician along, as well as her husband. The issues surrounding the physical examination would, on the basis of the above, seem completely within the discretion of the court, although the question as to whether the defendant may exclude the plaintiff's attorney or physician remains to be decided. See Discovery Rule 5, General Rules of Practice and Procedure of the Court of Appeals of Maryland (October 1, 1955), recognizing the court's discretion and control. On the specific point see 135 A. L. R. 883, *et seq.*

Testamentary Law — Illegitimate Half-Sister Cannot Take Intestate Share Of Legitimate Half-Brother's Estate. *In re Klingaman's Estate, 119 A. 2d 748 (Del. Ch. 1956).* Unmarried intestate, predeceased by his parents, was survived by no brothers or sisters other than defendant illegitimate half-sister on his mother's side. Plaintiff cousin petitioned the court for a distribution to collaterals of equal degree, barring defendant, who was administratrix, from any share in the estate. *Held,* petition granted. Though the Code permits a legitimate child of the same womb to inherit from his illegitimate brother or sister, through the common mother, the statutory framework controlling the intestate interests of illegitimates is too rigid to permit the converse. That framework denies participation of the closest blood relative of the intestate in his estate.

Md. Code (1951) Art. 93, Sec. 145, is not as narrow as the several provisions in the Delaware Code, but there is a close question whether its wording is broad enough to support a holding that an illegitimate child is so placed in the mother's "blood stream" as to enable him to inherit from his legitimate brother or sister.

Testamentary Law — Successively Adopted Child Cannot Inherit From His Prior Adopting Parents. *In Re Leichtenberg's Estate, 7 Ill. 2d 545, 131 N. E. 2d 487 (1956).* Victor left his natural parents and was adopted by the

Leichtenbergs. Two weeks later he returned to his natural parents and was subsequently readopted by them. When Mrs. Leichtenberg died, intestate, Victor filed objections to the Probate Court's finding that she left no natural or adopted children. On appeal from a holding sustaining the objections, *held,* reversed. "Adopting parents do not, in every respect, stand in the same relationship to the child as do his natural parents."

Thus, while the prior adopting parents of a successively adopted child do not have a duty of support, the natural parents continue to have that duty regardless of adoption. One may be the adopted child of adopting parents and the natural child of natural parents, but he cannot be the adopted child of successive adopted parents. The probate laws permit an adopted child to inherit from his adopting parents as if he were their natural child. It cannot be assumed that the Legislature intended this to extend to former adopting parents, for so to hold would be to make the tracing of heirship too difficult.

Davis, J., dissented: the right to inheritance, either from natural or adopting parents, is a privilege granted by statute. Under those statutes, an adopted child is given the same right of inheritance as a natural child of the same parents. This leaves no room for interpretation. As a matter of law Victor is entitled to inherit from the Leichtenbergs as if he were their natural child, which is to say, regardless of subsequent adoption.

The holding of this case represents the minority American view, the dissent the majority. The Court of Appeals has not decided the point, but the Maryland statutes are similar to those of Illinois. The right of a person to inherit property is not a "natural right" but a privilege "granted by the state". *Safe Deposit and Trust Co. of Baltimore v. Bouse,* 181 Md. 351, 29 A. 2d 906 (1943). With reference to interlocutory and final decrees, that "the person adopted shall be, to all intents and purposes, the child of the petitioner . . . the person adopted shall be entitled to all the rights and privileges . . . of a child born in lawful wedlock." Md. Code (1951) Art. 16, Sec. 86(a). "Nothing in this subtitle shall be construed to prevent the person adopted from inheriting from his natural parents . . ." Md. Code (1951) Art. 16, Sec. 86(b). See also Md. Code (1951) Art. 16, Sec. 88.

Majority View Cases: *Holmes v. Curl,* 189 Ia. 246, 178 N. W. 406 (1920); *Dreyer v. Schrick,* 105 Kan. 495, 185 P. 30 (1919); *Hawkins v. Hawkins,* 218 Ark. 423, 236 S. W.

2d 733 (1951); *In Re Egley's Estate,* 16 Wash. 2d 681, 134 P. 2d 943, 145 A. L. R. 821 (1943); *Villier v. Watson,* 168 Ky. 631, 182 S. W. 869 (1916); *In Re Myre's Estate,* 205 Misc. 880, 129 N. Y. S. 2d 531 (1954); *Patterson v. Browning,* 146 Ind. 160, 44 N. E. 993 (1896); *In Re Sutton's Estate,* 161 Minn. 426, 201 N. W. 925 (1925); *Coonradt v. Sailors,* 186 Tenn. 294, 209 S. W. 2d 859 (1948).

Minority View Cases: *In Re Klapp's Estate,* 197 Mich. 615, 164 N. W. 381 (1917); *In Re Carpenter's Estate,* 327 Mich. 195, 41 N. W. 2d 349 (1950); *In Re Talley's Estate,* 188 Okla. 338, 109 P. 2d 495 (1941).

Torts — One Who Places Himself In The Public Eye Renounces His Right Of Privacy. *Smith v. National Broadcasting Co., 292 P. 2d 600 (Cal. App. 1956).* Plaintiff made a false report to the police of the escape of a black panther from his truck. This report caused widespread fear among residents of Los Angeles and resulted in a vigorous police search. The police concluded that there was no truth to the report. The plaintiff was arrested and given a psychiatric examination. Three months later defendants produced a radio broadcast, based on this incident, on the program "Dragnet". Plaintiff sued for an invasion of his right of privacy. On appeal from judgment for defendant, *held,* affirmed. The interest protected by the right of privacy is the right to be free from unwarranted publicity of the private affairs and activities of an individual which are outside the realm of legitimate public concern. Plaintiff's act of issuing the fake report, which caused the great search and greater public turmoil, removed the plaintiff from the mass of people entitled "to be let alone". His affairs in the matter were no longer private by the time the broadcast was made.

While it does not appear that the Maryland Court of Appeals has recognized a legally enforceable right of privacy, many other states have done so, either through statutes or by expanding the common law. For annotations to this ever-increasing problem see 168 A. L. R. 446; 14 A. L. R. 2d 750.